

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAEAL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMAÑA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF MILTON RUIZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Milton Ruiz, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.
2. I am a resident of Bay Shore, New York, in Long Island.
3. I currently work for ELM as a driver and sometimes as a laborer. I have been working for ELM since approximately 2018.
4. My duties as a driver include, but are not limited to, picking up and delivering materials to jobsites. During warmer months, I work more often as a driver.
5. In other times, as needed, I work as a laborer, especially during the colder months.
6. As a laborer, my duties were gardening-related, such as cutting and planting grass.

7. I sometimes work as a driver and laborer during the same week.

8. As a driver, I first go to 25 Newton Place, Hauppauge, New York ("Hauppauge facility") by 4:00 a.m. to pick up the company vehicle. I typically drive the company vehicle alone to jobsites to transport materials and do not transport employees to jobsites, but I sometimes have a helper who comes with me. I do not drop the helper off at a jobsite; rather he rides with me throughout the day. I go in earlier at approximately 4:00a.m. to the Hauppauge facility when I have to go to a New York City jobsite. If my jobsite is in Long Island, I get to the Hauppauge facility slightly later at approximately 7:00 a.m.

9. When driving into New York City, I work approximately twelve (12) hours from 4:00 a.m. to 4:00 p.m.

10. Depending on the job, I work approximately eight (8) hours when working as a driver on Long Island.

11. When I work as a laborer, I arrive at the Hauppauge facility by 4:00 a.m. to get picked up in a company vehicle at around 4:30 a.m. and transported to the jobsite. I did not perform any work at the Hauppauge facility prior to the workday. I typically wait in my car at the Hauppauge facility until it is time to commute to the jobsite.

12. I did not have a specific jobsite I was assigned to but I generally performed labor work in New York City jobsites.

13. It generally takes about one (1) to one and one-half (1 ½) hours to travel from the Hauppauge facility to the jobsite in the morning. It takes approximately two (2) hours to travel back to the Hauppauge facility from the jobsite at the end of the workday.

14. I arrive at the jobsite by approximately 6:00 a.m. and work from approximately 7:00 a.m. to 3:30 p.m. as a laborer.

15. ELM paid me approximately \$34.00 per hour for all hours worked up to forty (40), which included time spent driving and time worked as a laborer.

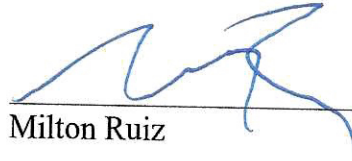
16. Whenever I worked over forty (40) hours per week, ELM paid me an overtime hourly rate.

17. My primary language is Spanish. On January 25, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

18. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 25, 2023


Milton Ruiz